

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

BakkenLink Pipeline, LLC  
Crude Oil Pipeline- Williams to Billings Counties  
Siting Application

Case No. PU-10-218

AFFIDAVIT OF SERVICE REGULAR, EMAIL OR INSIDE MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 2<sup>nd</sup> day of **March, 2012**, she deposited in the United States Mail, Bismarck, North Dakota, **28** envelopes by first class mail, fully prepaid, securely sealed and each containing a photocopy; **7** envelopes by Inside Mail; and **12** electronic mail messages, each with an attached electronic copy of:

**Order**

The envelopes and electronic mails respectively were addressed as follows:

See attached list.

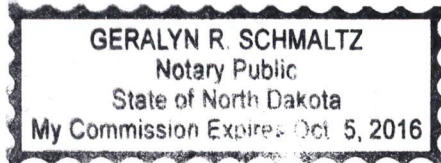
Each post office address shown is the respective addressee's last reasonably ascertainable post office address and each email address is the respective addressee's last reasonably ascertainable electronic mailing address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of **March, 2012**.

  
\_\_\_\_\_  
Notary Public

SEAL



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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**BakkenLink Pipeline LLC  
Crude Oil Pipeline – Williams to Billings County  
Siting Application**

**Case No. PU-10-218**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING  
CORRIDOR CERTIFICATE AND ROUTE PERMIT**

**February 29, 2012**

**Appearances**

Commissioners: Tony Clark, Kevin Cramer, and Brian P. Kalk.

Lawrence Bender and Mollie M. Smith, Attorneys-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of BakkenLink Pipeline LLC.

Matthew Sagsveen, Assistant Attorney General, North Dakota Office of Attorney General, 600 East Boulevard, Dept. 125, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission.

Patrick Fahn, Director – Compliance and Competitive Markets Division, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

**Preliminary Statement**

Under North Dakota Century Code, Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On June 21, 2011, BakkenLink Pipeline LLC (BakkenLink) filed with the North Dakota Public Service Commission (Commission) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (Application) to authorize construction of a crude oil pipeline project (Project) in Billings, Dunn, McKenzie, Stark and Williams Counties, North Dakota.

BakkenLink requests that the Commission waive the following requirements: (1) that the Commission hold a separate hearing on BakkenLink's waiver request, Certificate of Corridor Compatibility application and Route Permit application; (2) separately filed applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications; and (3) the submission of mylar maps and stereo-pair aerial photographs, per the Commission's Application Guidelines for a Corridor Certificate and a Route Permit.

On August 3, 2011, the Commission found the application of BakkenLink to be complete and issued a Notice of Filing and Notice of Hearing scheduling a hearing for September 1, 2011, at 10:00 am at the McKenzie County Court House, 201 5<sup>th</sup> Street NW, Watford City, North Dakota.

On August 30, 2011, the Commission issued a Notice of Continued Hearing.

On September 7, 2011, the Commission issued a Notice of Continued Hearing rescheduling the public hearing for October 25, 2011 at 9:00 am CDT at the McKenzie County Court House, 201 5<sup>th</sup> Street NW, Watford City, North Dakota.

The Notice of Continued Hearing identified the following issues to be considered:

1. Is the proposed facility of such length, design, location, or purpose that it will produce minimal adverse effects, or, does a demonstrable emergency exist which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system?
2. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
3. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
4. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On September 22, 2011, BakkenLink filed an Amendment to its Application.

On October 25, 2011, the public hearing was held as scheduled.

On November 21, 2011, BakkenLink filed the following: late-filed Exhibit 10, consisting of the Class II and Class III Cultural Resource Inventory Interim Report (Interim Cultural Resource Report), and a letter from the North Dakota State Historic Preservation Office (SHPO), dated November 21, 2011; late-filed Exhibit 11, consisting of an Addendum to the Wetland Delineation Report (submitted at the public hearing as Exhibit 6); and late-filed Exhibit 12, consisting of legal descriptions of horizontal

directional drill (HDD) and conventional bore locations, GIS shapefiles showing the HDD and conventional bore locations, and depth of cover information for waterbodies to be crossed by the Project.

On December 2, 2011, BakkenLink filed the Affidavit of Jame L. Todd with an accompanying exhibit identifying those tracts containing portions of the route that the SHPO stated in its November 21, 2011 letter need to be treated and reported.

On February 24, 2012, BakkenLink filed the Affidavit of Todd Hartleben, that provided information regarding certain route modifications, as well as updated survey information. The following documents were provided as exhibits to the Affidavit: maps showing the route modifications; a wetland delineation letter report; a Class II and Class III Cultural Resource Inventory Report, with accompanying Site Testing Plans document, a transmittal letter to the SHPO, and a letter from the SHPO to BakkenLink conditioning the SHPO's concurrence on BakkenLink's compliance with the lead federal agency regulations, attendant federal agency review, comment, recommendations, and permitting.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

### **Findings of Fact**

1. BakkenLink is a Delaware limited liability company that is headquartered in Houston, Texas.
2. BakkenLink has been authorized to transact business in the State of North Dakota since February 24, 2011, as evidenced by a Certificate of Good Standing issued by the North Dakota Secretary of State on August 24, 2011.

### **Size, Type, and Preferred Location of Facility**

3. The Project will consist of an underground mainline, three lateral lines that will transport light sweet crude, and six receipt points. The mainline will consist of approximately 123.8 miles of 12-inch pipe extending from Beaver Lodge, North Dakota, to a proposed crude oil rail loading facility located near Fryburg, North Dakota, which is being developed by another entity. The Project's three 8-inch lateral lines will consist of an approximately 1.3-mile-long segment extending from the Arrow Midstream Receipt Point to an interconnection point with the mainline near Johnsons Corner, North Dakota, an approximately 4 mile segment extending from the Dunn Receipt Point to an interconnection point with the mainline approximately 30 miles north of Belfield, North Dakota, and an approximately 3.6-mile-long segment extending from the Belfield Receipt Point to an interconnection point with the mainline just north of Belfield, North Dakota. The receipt points will be: Beaver Lodge Receipt Point, Williams County; Keene Receipt Point, McKenzie County; Arrow Midstream Receipt Point, McKenzie County; Watford City Receipt Point, McKenzie County; Dunn Receipt Point, Dunn County; and Belfield Receipt Point, Stark County. The Project will be located in Billings,

Dunn, McKenzie, Stark and Williams Counties, North Dakota. The total cost of the Project is estimated to be approximately \$126.5 million.

4. The Project will utilize 8-inch and 12-inch steel pipe and the maximum operating pressure will be 1,480 pounds per square inch gauge. The 12-inch mainline will have an initial capacity of 65,000 barrels per day (bpd), with a maximum capacity of up to 100,000 bpd. The 8-inch lateral lines will have an initial capacity of up to 15,000 bpd, with a maximum capacity of up to 20,000 bpd.

5. Surface facilities installed as part of the Project will include: receipt point tees; mainline valve assemblies; cathodic test stations; "pig" launchers and receivers; block valves; a SCADA system; and pipeline markers. Some small fenced-in enclosures to house associated power and control systems may be installed to allow valves to be operated remotely.

#### Need for the Facility

6. BakkenLink has concluded that there is a need for the facility because there is insufficient capacity from existing and planned pipeline infrastructure to meet the anticipated future transportation needs of producers in the Bakken and Three Forks development area, particularly in the area in which the Project will be located. The Project will help address anticipated regional pipeline and outlet constraints as development of the Bakken continues, will encourage development of local gathering systems, and will allow for future outlet connections to other major crude oil transmission systems.

#### Study of Preferred Route(s)

7. In its application, BakkenLink defined a one-mile wide study area centered on the preferred pipeline route. Within the study area, except where the Project route parallels an existing Dakota Gasification Company carbon dioxide pipeline, BakkenLink utilized an approximately 200-foot-wide survey corridor centered on the preferred pipeline route for the purpose of conducting cultural resource field surveys, biological and wetland/water body field surveys and environmental assessments. Where the route parallels the Dakota Gasification Company carbon dioxide pipeline, BakkenLink utilized an approximately 200-foot-wide corridor centered on the DGC pipeline.

8. BakkenLink analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The alternatives considered included a no action alternative, market alternatives, existing pipeline alternatives, truck and rail alternatives, and routing alternatives.

9. The following agencies were contacted by BakkenLink and provided written comments: Natural Resource Conservation Service; United States Army Corps of Engineers (USACE); United States Department of the Interior – National Park Service; North Dakota Department of Transportation; North Dakota Game and Fish Department; North Dakota Parks and Recreation Department; North Dakota Department of Health (NDDH); Job Service North Dakota; and SHPO.

10. BakkenLink conducted a Class I literature search on a three-mile wide study area, and a Class II and Class III cultural resource inventory has been completed on the 200-foot wide survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and water body crossings, and protected species.

11. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

12. A transmission facility route must not be sited within an Exclusion Area. The survey corridor is within the legislative boundary of the Theodore Roosevelt National Park, an Exclusion Area, but the area is not crossed by the route.

13. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area shall be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Four types of Avoidance Areas are located within the corridor: national grasslands; residences; a municipal water supply; and cultural resources.

14. Little Missouri National Grasslands (LMNG) is within the survey corridor and will be crossed by the route. BakkenLink has coordinated with the United States Forest Service (USFS) regarding crossing the LMNG. The route selected is located within an existing utility corridor, and will avoid USFS-designated roadless areas and suitable for wilderness areas. BakkenLink presented testimony indicating that there was no reasonable alternative to crossing the LMNG.

15. Residences are present within the corridor; however, none of the residences, nor any schools or businesses, are within 500 feet of the route.

16. Lake Sakakawea is within the corridor and will be crossed by the route. The Project will cross Lake Sakakawea within a USACE-designated utility corridor where the route will parallel three existing pipelines. BakkenLink will obtain a permit from the USACE, who will also approve the construction method to be used for the crossing. Sediment sampling of the lake has been performed and the NDDH will review the results prior to approval and permitting by the USACE. BakkenLink presented testimony indicating that there was no reasonable alternative to crossing Lake Sakakawea.

17. Cultural resources are present within the survey corridor, but the route will avoid or mitigate impacts to any cultural resources in accordance with the SHPO's recommendations. Following the public hearing, BakkenLink filed with the Commission

the Interim Cultural Resource Report, covering the majority of the route, and a letter from the SHPO as late-filed Exhibit 10. On February 24, 2012, BakkenLink filed with the Commission a Class II and Class III Cultural Resource Inventory Report, covering the remaining portions of the route, and a letter from the SHPO conditioning its concurrence on BakkenLink's compliance with the lead federal agency regulations, attendant federal agency review, comment, recommendations, and permitting. Under N.D.C.C. section 28-32-25, the Commission considers these filings as part of the record in this proceeding.

18. In accordance with the Commission's Selection Criteria, a transmission route shall be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. BakkenLink has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse impacts on the Commission's Selection Criteria.

19. Wetland delineations were completed along the proposed route. Wetlands are present within the study area and will be crossed by the route. BakkenLink will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated. BakkenLink filed with the Commission as late-filed Exhibit 11 an addendum to the Wetland Delineation Report (Exhibit 6) providing information that was not available at the time of the public hearing. In addition, BakkenLink filed with the Commission as late-filed Exhibit 12 a list of the legal descriptions for and GIS mapping of directional drilling and conventional bore locations along the route, as well as the anticipated depth of the pipeline below the waterbody bed for waterbody crossings. On February 24, 2012, BakkenLink filed with the Commission a wetland delineation letter report covering the route modifications.

20. Some woodlands are present within the study area, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs that would be affected by the Project will be completed. Trees and shrubs will be replaced in accordance with the Commission's tree and shrub mitigation specifications.

21. The Project may result in modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened or sensitive plant or animal species.

22. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. BakkenLink has analyzed the relevant Policy Criteria and has expressly committed to designing, constructing and operating the pipeline in accordance with all applicable federal, state and local laws and regulations; energy conservation through the facility's location, process and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving transmission capacity in the most minimally intrusive and most efficient way possible; and coordinating with state

and local officials. BakkenLink submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility as far as is possible so as to meet the Policy Criteria.

23. It is appropriate to authorize a corridor only for the area for which BakkenLink performed the more thorough cultural resource study.

#### Measures to Minimize Impact

24. BakkenLink has agreed to a number of steps to mitigate the impact of the Project, as indicated by the October 24, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

25. The Project's permanent right-of-way (ROW) will be 50 feet wide, while its temporary ROW will generally be 100 feet wide. Additional temporary workspace may be required at certain locations (e.g., road, railroad and river crossings), while a narrower temporary ROW may be used in environmentally sensitive areas. The construction ROW will be reduced to 50 feet wide in wooded areas. BakkenLink will use existing public roads to access the ROW, and does not expect to modify roads or construct new permanent access roads.

26. The design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, as prescribed under 49 CFR Parts 194 and 195.

27. BakkenLink will participate in the North Dakota One-Call Excavation Notice System.

28. BakkenLink will prepare an Emergency Response Plan with the assistance of local authorities and first responders as part of the pipeline commissioning activities.

From the foregoing Findings of Fact, the Commission now makes its:

#### Conclusions of Law

1. The Commission has jurisdiction over the applicant, BakkenLink Pipeline LLC, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.

2. BakkenLink is a utility as defined in North Dakota Century Code Section 49-22-03(13).

3. The proposed pipeline is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction and operation of the Project are compatible with environmental preservation and the efficient use of resources.
6. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The Project is of such design and location that it will produce minimal adverse effects, in accordance with North Dakota Century Code Section 49-22-07.2.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under North Dakota Century Code Section 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

### **Order**

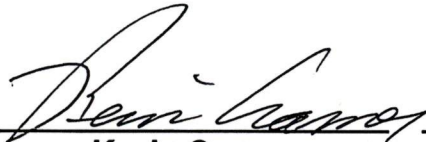
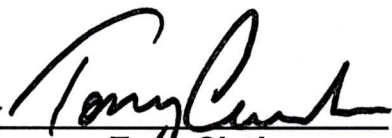
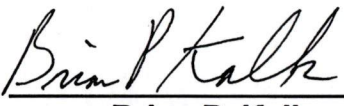
The Commission orders:

1. BakkenLink Pipeline LLC's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility Number 128 is conditionally issued to BakkenLink Pipeline LLC designating a corridor for the construction, operation, and maintenance of a 12-inch and 8-inch crude oil pipeline system with receipt points and associated facilities in Billings, Dunn, McKenzie, Stark and Williams Counties. For the purposes of the Certificate, the corridor consists of a 200-foot-wide area centered on the pipeline route, as depicted on the complete route map provided in Exhibit A to the Affidavit of Todd Hartleben, for the length route, except where the route parallels the existing Dakota Gasification Company carbon dioxide pipeline. Where the route parallels the existing Dakota Gasification Company carbon dioxide pipeline, the corridor consists of a 200-foot-wide area centered on the Dakota Gasification Company carbon dioxide pipeline. The Certificate is conditioned upon BakkenLink obtaining the SHPO's final concurrence.
3. Route Permit Number 137 is conditionally issued to BakkenLink Pipeline LLC granting authority to construct and operate a 12-inch and 8-inch crude oil pipeline system with receipt points and associated facilities in Billings, Dunn, McKenzie, Stark and Williams Counties as depicted on the complete route map provided in Exhibit A to the Affidavit of Todd Hartleben. The Permit is conditioned upon BakkenLink obtaining the SHPO's final concurrence.

4. The October 24, 2011 Certification Relating to Order Provisions – Transmission Facility Siting (Certification) is incorporated by reference and attached to this Order.

5. To the extent there are any conflicts or inconsistencies between the Application and the Certification provisions, the Certification provisions control.

**PUBLIC SERVICE COMMISSION**

		
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<b>Kevin Cramer</b> Commissioner	<b>Toby Clark</b> Chairman	<b>Brian P. Kalk</b> Commissioner

**PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 128**

*This is to certify that the Commission has designated a transmission facility corridor for BakkenLink Pipeline LLC for the construction of 123.8 miles of 12-inch pipeline; and three 8-inch lateral pipelines (a four-mile lateral, a 1.3-mile lateral and a 3.6-mile lateral) and associated facilities in Billings, Dunn, McKenzie, Stark and Williams Counties, North Dakota, for the transmission of crude oil.*

*This certificate is issued in accordance with the Order of this Commission dated February 29, 2012 in Case No. PU-10-218 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, February 29, 2012.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

# STATE OF NORTH DAKOTA

## Route Permit Number 137

*This is to certify that the Commission has designated a transmission facility route for BakkenLink Pipeline LLC for the construction of 123.8 miles of 12-inch pipeline; and three 8-inch lateral pipelines (a four-mile lateral, a 1.3-mile lateral and a 3.6-mile lateral) and associated facilities in Billings, Dunn, McKenzie, Stark and Williams Counties, North Dakota, for the transmission of crude oil.*

*This permit is issued in accordance with the Order of this Commission dated February 29, 2012 in Case No. PU-10-218 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, February 29, 2012.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**BakkenLink Pipeline, LLC**  
**Crude Oil Pipeline – Williams to Billings County**  
**Siting Application**

**Case No. PU-10-218**

**CERTIFICATION RELATING TO ORDER PROVISIONS - TRANSMISSION FACILITY SITING**

I am Steven J. Griesser, a representative of BakkenLink Pipeline, LLC (BakkenLink) with authority to bind BakkenLink to requirements to be set forth by the Commission in its Order and I certify the following:

1. BakkenLink understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that BakkenLink shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. BakkenLink agrees to hold a preconstruction conference prior to commencement of any construction, which must include a BakkenLink representative, its construction supervisor, and a representative of Commission Staff, to ensure that BakkenLink fully understands the conditions set forth in the Commission's order.
3. BakkenLink agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. BakkenLink understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. BakkenLink agrees to inform the Commission of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, BakkenLink shall keep the Commission updated on construction activities on a weekly basis.
6. BakkenLink understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

7. BakkenLink understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
8. BakkenLink agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. BakkenLink agrees to construct and operate the transmission facility in the manner described in BakkenLink's application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements (Application). To the extent there are any conflicts or inconsistencies between BakkenLink's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. BakkenLink agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which BakkenLink becomes aware and which were not previously reported to the Commission.
11. BakkenLink understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. BakkenLink understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. BakkenLink understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits BakkenLink to open cut the road.
14. BakkenLink understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas

used as temporary roads or working areas during construction must be restored to their original condition.

15. BakkenLink understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. BakkenLink understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. BakkenLink understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. BakkenLink understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. BakkenLink understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. BakkenLink agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. BakkenLink understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the transmission facility.
22. BakkenLink understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. BakkenLink understands and agrees that it shall repair or replace all broken or damaged drainage tile during all phases of construction and operation of the transmission facility.

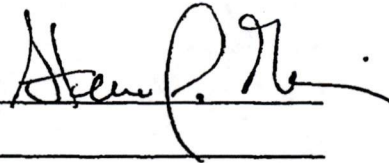
24. BakkenLink understands and agrees that staging areas or equipment shall not be located on land owned by a person other than BakkenLink unless otherwise negotiated with landowners.
25. BakkenLink understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. BakkenLink understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
27. BakkenLink understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
28. BakkenLink understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
29. BakkenLink understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by BakkenLink.
30. Upon request, BakkenLink agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
31. BakkenLink understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility. BakkenLink understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the transmission facility. Approval may be granted after notice and opportunity for hearing.
32. BakkenLink agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission, and will provide this information within 3 months of the Commission order approving the corridor. BakkenLink also agrees to provide an electronic version of the approved corridor that can be imported into ESRI GIS mapping software within 3 months of the Commission order approving the corridor. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the

coordinate system used. All submissions must specify the datum in which the data was developed.

33. BakkenLink agrees to provide the Commission with both an electronic and a paper copy of the design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. BakkenLink also agrees to provide an electronic version of the as-built facility design specifications that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
34. BakkenLink understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
35. BakkenLink understands and agrees that in the event BakkenLink desires to construct, within any corridor granted by a Certificate of Corridor Compatibility in this proceeding, a transmission facility or energy conversion facility that was not included in BakkenLink's application in this proceeding, BakkenLink shall apply to the Commission for a Route Permit or Site Certificate for the facility.
36. BakkenLink shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, BakkenLink shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission or Commission staff.
37. BakkenLink understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 24<sup>th</sup> day of October, 2011.

BakkenLink Pipeline, LLC

By 

Its President

**Case No. PU-10-218**

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height ("dbh") or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody

vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (NDPSC) and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the NDPSC.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

#### **Replacement**

10. Prior to tree/shrub replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the NSPSC for approval.
11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.
12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement shall not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees/shrubs to be planted at alternative locations.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings shall be filed with the NDPSC.
16. Tree/shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the NDPSC documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the NDPSC may order additional planting(s).